

JUDGE: STEINER
DATE: 4/16/2010
TIME: 10:00 a.m.
CHAPTER: 11
PLACE: Seattle

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

In re:) Case No. 09-10188
)
LAWRENCE KATES,) UNITED STATES' OBJECTION TO
) CONFIRMATION OF FIRST AMENDED
Debtor.) PLAN OF REORGANIZATION
)
)
)

The United States, through the undersigned attorney, on behalf of the Internal Revenue Service, hereby objects to confirmation of the First Amended Plan of Reorganization Proposed by Debtor in this case. The United States submits the following grounds in support of its objection:

1. The Service has filed an amended proof of claim against the debtor in the total amount of \$174,260.00 all of which is a claim entitled to priority under Bankruptcy Code § 507(a)(8).

2. The claim of the Service has not been objected to and is deemed allowed. Bankruptcy Code § 502.

3. Bankruptcy Code § 1129(a)(9)(C) requires that the holder of a priority tax claim under Bankruptcy Code § 507(a)(8) receive payments in cash of a total value as of the

1 effective date of the plan equal to the allowed amount of such
2 claim over a period ending not later than 5 years after the date
3 of the order for relief and in a manner not less favorable than
4 the most favored nonpriority unsecured claim provided for in the
5 plan.

6 4. The plan fails to provide for payment in full of the
7 Service's priority claim with interest under Internal Revenue
8 Code § 6621 as required by Bankruptcy Code §§ 1129 and 511. The
9 plan cannot be confirmed because it fails to provide for payment
10 in full of the Service's priority claim in accordance with
11 Bankruptcy Code § 507(a)(8).

12 5. The plan must provide for equal monthly installments
13 that will pay in full the tax debt and interest over the period
14 not to exceed 5 years after petition date. The plan does not
15 specify a due date for the first and each subsequent
16 installment. The first payment should be due no later than May
17 1, 2010 with regular installment payments due on the first of
18 each month thereafter until paid in full.

19 6. The plan does not provide that the tax debt to the
20 Service will not be discharged until paid in full under the
21 terms of the plan. Bankruptcy Code § 1141(d) contemplates the
22 plan providing for discharge of debt other than as set forth in
23 1141(d) including tax claims entitled to priority under
24 Bankruptcy Code § 507(a)(8) which are nondischargeable under
25

1 Bankruptcy Code § 523(a)(1). Bankruptcy Code § 1141(d)(2). The
2 plan provides for the liquidation of substantially all assets of
3 the estate so that the debtor will not be entitled to a
4 discharge under Bankruptcy Code § 1141(d)(3)(A). So the
5 provision in Section VIII of the Amended Plan of Reorganization
6 incorrectly states the conditions of discharge of the debtor.

7 7. In the event of default, the Service should be allowed
8 to proceed with the type of collection it normally would have
9 employed in the absence of bankruptcy and should have the rights
10 it would have had but for the bankruptcy filing of the debtor.
11 The amended plan should specifically provide that, within 30
12 days of a default under the First Amended Plan of
13 Reorganization, the administrative collection powers and the
14 rights of the Service will be reinstated as they existed prior
15 to the filing of the bankruptcy petition, including, but not
16 limited to, the assessment of taxes, the filing of a Notice of
17 Federal Tax Lien and the powers of levy, seizure, and sale under
18 the Internal Revenue Code.

19 8. The First Amended Plan of Reorganization proposes to
20 liquidate substantially all assets of the estate. There is no
21 provision for the plan administrator to set aside proceeds of
22 the sales for payment of estimated federal tax on the capital
23 gains on the sales. A provision for a reserve from the sale
24 proceeds for payment of the federal tax on the capital gain on
25

1 the sales should be included in the plan.

2 WHEREFORE, the United States respectfully prays that the
3 Plan not be confirmed.

4 Dated this 9th day of April, 2010.

5 JENNY A. DURKAN
6 United States Attorney

7
8 By: /s/ Catherine L. Campbell
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In re:) Case No. 09-10188
)
LAWRENCE KATES,)
) CERTIFICATE OF SERVICE
)
Debtor.

The undersigned hereby certifies that s(he) is an employee of The Office of Chief Counsel, Internal Revenue Service, and a person of such age and discretion as to be competent to serve papers; that on the date set forth below (s)he served a copy of the UNITED STATES' OBJECTION TO CONFIRMATION OF FIRST AMENDED PLAN OF REORGANIZATION by ECF as follows:

Mark D. Northrup	Martin L. Smith
Attorney for Debtor	Attorney for U.S. Trustee

DATED this 9th day of April, 2010.

/s/ Catherine L. Campbell